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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

13 CR 074 (JPO)

6 KENNETH SOTO,

7 Defendant.
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New York, N.Y.
June 27, 2013
11:09 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York

KRISTY GREENBERG

Assistant United States Attorney

GEORGE A. FARKAS

Attorney for Defendant

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1 (In open court)

2 THE DEPUTY CLERK: Your Honor, this is in the matter
3 of *United States of America v. Kenneth Soto*.4 Starting with the government, can I have counsel state
5 their appearance for the record, please.6 MS. GREENBERG: Kristy Greenberg for the government.
7 Good morning, your Honor.

8 THE COURT: Good morning.

9 MR. FARKAS: Good morning, your Honor. George A.
10 Farkas for the defendant, Kenneth Soto.11 THE COURT: Good morning. We're here for a plea in
12 this matter.13 Mr. Soto, I've been informed you wish to plead guilty
14 to Count One of the indictment which charges you with worker's
15 compensation fraud. Is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Before accepting your plea, first I
18 want to confirm: You speak and understand English. Is that
19 right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I'm going to ask you certain questions so
22 that I can establish that you wish to plead guilty because you
23 are guilty and not for some other reason. If you don't
24 understand any of my questions or if at any point you want a
25 chance to talk further with Mr. Farkas, please let me know.

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1 Okay?

2 THE DEFENDANT: Yes.

3 THE COURT: Please place the defendant under oath.

4 (Defendant sworn)

5 THE COURT: Mr. Soto, you're now under oath. If you
6 answer any of my questions falsely, your answers could be used
7 against you in a prosecution for perjury.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Please state your full name.

11 THE DEFENDANT: Kenneth Michael Soto.

12 THE COURT: How old are you, Mr. Soto?

13 THE DEFENDANT: Forty-four.

14 THE COURT: How far did you go in school?

15 THE DEFENDANT: Seventh.

16 THE COURT: Seventh?

17 THE DEFENDANT: Seventh grade.

18 THE COURT: Seventh grade. Okay. Where was that?

19 THE DEFENDANT: Junior High School 226.

20 THE COURT: Here in New York?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you ever been treated or hospitalized
23 for any mental illness?

24 THE DEFENDANT: No, sir.

25 THE COURT: And have you recently been or are you now

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1 under the care of a psychiatrist or a doctor?

2 THE DEFENDANT: No.

3 THE COURT: Have you ever been hospitalized or treated
4 for addiction to drugs or alcohol?

5 THE DEFENDANT: No.

6 THE COURT: In the past 24 hours, have you taken any
7 pills or medicine or any alcoholic beverages?

8 THE DEFENDANT: No.

9 THE COURT: Is your mind clear today?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand what's happening in this
12 proceeding?

13 THE DEFENDANT: Yes.

14 THE COURT: Does either counsel have any doubt as to
15 the defendant's competence to plead today?

16 MS. GREENBERG: No, your Honor.

17 MR. FARKAS: No, sir.

18 THE COURT: Okay. Based on his responses to my
19 questions and his demeanor today, I find the defendant is
20 competent to enter a plea of guilty at this time.

21 Mr. Soto, have you had a sufficient opportunity to
22 discuss your case with your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Have you had a sufficient opportunity to
25 discuss the specific charge that you intend to plead guilty to,

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1 any possible defenses to the charge, and the consequences to
2 pleading guilty?

3 THE DEFENDANT: Yes.

4 THE COURT: And are you satisfied with his
5 representation of you?

6 THE DEFENDANT: Yes.

7 THE COURT: I'm now going to explain certain
8 constitutional rights that you have. I explain this because
9 these are rights that you give up when you plead guilty, so I
10 want to make sure you understand them.

11 Under the Constitution and laws of the United States,
12 you are entitled to a speedy and public trial by a jury on the
13 charge contained in the indictment.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: At that trial you would be presumed
17 innocent and the government would be required to prove you
18 guilty by competent evidence and beyond a reasonable doubt
19 before you could be found guilty. You would not have to prove
20 that you're innocent. A jury of 12 people would have to agree
21 unanimously that you're guilty.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: At that trial and at every stage of your
25 case, you would be entitled to be represented by an attorney.

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1 If you could not afford one, an attorney would be appointed to
2 represent you.

3 During a trial, the witnesses for the government would
4 have to come to court and testify in your presence and your
5 lawyer could cross-examine the witnesses for the government,
6 object to evidence offered by the government, and offer
7 evidence and compel witnesses to testify on your behalf.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: At a trial, although you would have the
11 right to testify if you chose to, you would also have the right
12 not to testify and no inference or suggestion of guilt could be
13 drawn from the fact that you did not testify if that's what you
14 chose.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If you were convicted at a trial, you
18 would also have the right to appeal that verdict. Even at this
19 time, as you're entering this plea, you do have the right to
20 change your mind and plead not guilty and go to trial.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: If you do plead guilty and I accept your
24 plea today, you will give up your right to trial and the other
25 rights I've described. There will be no trial, but I will

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1 enter a judgment of guilty on the one count to which you would
2 plead guilty and then I'll sentence you later on the basis of
3 that guilty plea, but only after considering certain
4 submissions I receive from the probation department, from your
5 lawyer and from you, if you like, and from the government's
6 lawyer.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. And if you plead guilty, you will
10 also have to give up your right not to incriminate yourself
11 since I will ask you questions about what you did in order to
12 satisfy myself that you're guilty as charged.

13 You've received a copy of the indictment containing
14 the charge against you?

15 THE DEFENDANT: Yes, I did.

16 THE COURT: Okay. And you've had a chance to read it
17 and discuss it with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: I'll ask counsel for the government,
20 Ms. Greenberg, if you'd please proffer to me the elements that
21 the government would seek to prove if there were a trial in
22 this case.

23 MS. GREENBERG: Yes, your Honor. The first count
24 charges a violation of Section 920 of Title 18 of the United
25 States Code, and there are five elements of that crime: First,

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1 that the defendant made a statement or representation on or
2 about the date specified in the indictment; second, that the
3 statement or representation was material; third, that the
4 statement or representation was false, fictitious or
5 fraudulent; fourth, that the false, fictitious or fraudulent
6 statement was made knowingly and willingly; and, fifth, that
7 the statement or representation was made in an effort to
8 receive federal employee compensation.

9 THE COURT: Thank you.

10 Those are the elements. If there were a trial, I'd be
11 instructing a jury that those are the elements they must find,
12 each one beyond a reasonable doubt.

I also want to explain the maximum possible penalty for this crime. Under the statute, the maximum possible penalty is five years' imprisonment, three years' supervised release. And supervised release means you're subject to monitoring following any release from incarceration. And there are terms of supervised release, conditions that you must comply with. If you fail to comply with them, you can be returned to prison without a jury trial. Also, a maximum fine of the greatest of \$250,000 or twice the total monetary gain from the offense or twice the total monetary loss to others from the offense. And there's a \$100 mandatory assessment.

25 In addition, as part of your plea agreement, you've

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1 agree to restitution in an amount to be ordered by the Court.

2 There's a forfeiture count in the indictment. Is that
3 right? Is that part of the plea?

4 MS. GREENBERG: There is a forfeiture allegation in
5 the indictment, yes. And the defendant would have to admit to
6 the forfeiture allegation as well.

7 THE COURT: All right. So as part of the plea
8 agreement, you'd have to admit to the forfeiture allegation,
9 which means you would agree to forfeit to the United States a
10 sum of money representing proceeds traceable to the offense or
11 involved in the offense.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you a United States citizen?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: Okay. If your attorney or anyone has
17 attempted to predict what your sentence will be, I want to
18 explain to you that they could be wrong. That's because
19 neither the government nor your attorney nor anyone else can
20 really predict what your sentence is going to be because I'm
21 the one who's going to decide on your sentence. I'm not going
22 to do that now, but I'm going to wait until I receive what's
23 called a presentence report prepared by the probation
24 department and consider it and any variances or departures from
25 it before deciding on your sentence.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Even if your sentence is different from
4 what your attorney has said or different from what you expect,
5 you will still be bound by your guilty plea and will not be
6 allowed to withdraw that plea.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Has anyone threatened you or forced you in
10 any way to plead guilty?

11 THE DEFENDANT: No.

12 THE COURT: Okay. I understand there's been a plea
13 agreement entered into by the government.

14 Did you sign this plea agreement?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. And did you have a chance to read
17 it and discuss it with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you feel you understand what's
20 contained in the plea agreement?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Okay. And is there anything that's been
23 left out of this agreement?

24 THE DEFENDANT: No.

25 THE COURT: Under this plea agreement, there's what's

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1 called a stipulated guideline range of 6 to 12 months'
2 imprisonment. This stipulation binds the government and you,
3 but not me, because I will be making my own independent
4 calculation of the sentencing guidelines.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that under this
8 agreement, you're giving up your right to appeal or otherwise
9 challenge your sentence as long as I sentence you to 12 months
10 or less, the top of the range, in prison?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Has anyone made a promise or done
13 anything other than what's in the plea agreement to cause you
14 to plead guilty?

15 THE DEFENDANT: No.

16 THE COURT: All right. Now I'm going to ask if you
17 would please tell me in your own words, Mr. Soto, what you did
18 that makes you believe you're guilty of Count One of the
19 indictment.

20 THE DEFENDANT: I signed the form stating that I
21 wasn't employed.

22 THE COURT: That you were not employed.

23 THE DEFENDANT: Right.

24 THE COURT: And you were actually employed at the
25 time?

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1 THE DEFENDANT: Yes.

2 THE COURT: Okay. And did you receive money pursuant
3 to that?

4 THE DEFENDANT: Yes.

5 THE COURT: You received checks from the government?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. And approximately when was this?

8 THE DEFENDANT: I believe around July. I started
9 receiving compensation, I think, until August.

10 THE COURT: Of 2010?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. And were you in New York? Were you
13 in Manhattan or where was it?

14 THE DEFENDANT: I'm sorry, Manhattan working or
15 living?

16 THE COURT: When you signed the form, where were you?

17 THE DEFENDANT: New Jersey.

18 THE COURT: Okay. Is there a venue issue?

19 MS. GREENBERG: Your Honor, the applications that
20 Mr. Soto was filling out were then mailed to the Department of
21 Labor office in Manhattan.

22 THE COURT: Okay. And does counsel for the government
23 agree that there's a sufficient factual predicate for the
24 guilty plea?

25 MS. GREENBERG: Your Honor, if the Court could simply

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1 ask Mr. Soto if he made the false representations knowingly and
2 willfully, and also just to clarify that the forms he was
3 filling out were applications for federal compensation and that
4 he was filling those out in order to receive federal
5 compensation.

6 THE COURT: Were they applications for federal
7 compensation?

8 THE DEFENDANT: Yes.

9 THE COURT: And you were filling them out to receive
10 federal compensation?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. And when you made the
13 statement on the form that you referred to, did you know that
14 it was false?

15 THE DEFENDANT: Yes.

16 THE COURT: And so you signed it knowingly and
17 willfully?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Does defense counsel agree that
20 there's a sufficient factual predicate for the plea?

21 MR. FARKAS: I do, your Honor.

22 THE COURT: Okay. And does defense counsel know of
23 any valid defense that would prevail at trial or any reason why
24 Mr. Soto should not be allowed to plead guilty?

25 MR. FARKAS: No, sir.

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1 THE COURT: Thank you.

2 Okay. Mr. Soto, since you acknowledge that you're in
3 fact guilty as charged in the indictment, and since I'm
4 satisfied that you know your rights, including your right to go
5 to trial, that you're aware of the consequences of your plea,
6 including the sentence which may be imposed, and since I find
7 that you voluntarily are pleading guilty, I accept your guilty
8 plea and I enter a judgment of guilty on Count One of the
9 indictment to which you pleaded guilty.

10 Now, turning to sentencing, I'm going to set a date
11 for sentencing in a few months. Part of that process I
12 mentioned is the presentence report. It's a document that the
13 probation department prepares with lots of information about
14 your history, your family, your background, and also about the
15 circumstances of this offense.

16 If, and when, you speak to the probation department
17 for an interview, please make sure anything you say is truthful
18 and accurate. If you say something that's false, it could have
19 a negative effect at the time of sentencing. And, also, it's
20 very important to me to get a full picture in the presentence
21 report of you before I decide on the sentence. So if you see
22 any mistakes in the presentence report, please let Mr. Farkas
23 know so he can get that corrected. Okay?

24 THE DEFENDANT: Yes.

25 THE COURT: In terms of timing for a sentencing date,

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1 the defendant is on bail. Is that right?

2 MS. GREENBERG: Yes.

3 THE COURT: And there's not going to be any objection
4 to continuing the current bail?

5 MS. GREENBERG: No, your Honor.

6 THE COURT: Okay, so pending sentence.

7 Would October 30th at 3 p.m. work for a sentencing
8 date?

9 MR. FARKAS: Yes, that's fine, Judge.

10 MS. GREENBERG: That's fine.

11 THE COURT: Okay. Sentencing is set for October 30th
12 at three o'clock p.m. in this courtroom. Again, you'll be
13 getting a draft of the presentence report. You'll have a
14 chance to take a look at it and correct any errors that need to
15 be made. I'm going to set a date for the defendant's
16 submission, if any. If you want to write anything, it will be
17 due October 16th, 2013, and then the government's submission
18 October 23rd, 2013. That's two weeks before and then one week
19 before the sentencing date.

20 MR. FARKAS: Your Honor, I'd just like to bring one
21 thing to your Honor's attention. I had mentioned this to
22 Ms. Greenberg. I am waiting for two documents from his union
23 that I believe will impact on mitigation in this case. He has
24 had some resistance from his union. Today I'm sending a letter
25 to the Director of Labor Relations in Washington to obtain

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1 those documents. If I see that there's a problem, I'm
2 thinking, first, that pretrial could get it through their
3 powers. But if they fail, I'm going to apply to your Honor for
4 subpoenas.

5 THE COURT: Okay.

6 MR. FARKAS: I don't know which one is going to work
7 faster.

8 THE COURT: Yes. Whatever you need to do.

9 MR. FARKAS: Okay.

10 THE COURT: Go through whatever you need. If you need
11 me to sign a subpoena, I'll do so.

12 MR. FARKAS: Thank you.

13 THE COURT: Again, the current bail status is
14 continued. The current conditions of your release on bail will
15 continue to the date of sentencing, so please make sure you
16 continue to comply with any conditions of your bail.

17 THE DEFENDANT: Yes.

18 THE COURT: And you must be in this courtroom at the
19 time of sentencing that I've set. It's a separate crime if you
20 fail to show up for sentencing known as bail jumping. And I'm
21 sure you won't fail to show up, but just so you know, make sure
22 you show up on time for sentencing which is, again, October
23 30th at three o'clock p.m.

24 THE DEFENDANT: Yes.

25 THE COURT: Anything else?

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1 MS. GREENBERG: Nothing from the government.

2 MR. FARKAS: No, your Honor.

3 THE COURT: Okay. Thank you very much.

4 MS. GREENBERG: Thank you.

5 (Adjourned)

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